

determination jointly in any situation in which both a commuter rail system and an intercity or high-speed rail system use the tracks serving the platform. FTA and FRA will respond to the railroad's plan in a timely manner, in accordance with the timetable set forth in paragraphs (d)(3)(i) through (d)(3)(iii) of this paragraph.

(i) FTA/FRA will provide an initial written response within 30 days of receiving a railroad's written proposal. This response will say either that the submission is complete or that additional information is needed.

(ii) Once a complete package, including any requested additional information, is received, as acknowledged by FRA/FTA in writing, FRA/FTA will provide a substantive response accepting, rejecting, or modifying the proposal within 120 days.

(iii) If FTA/FRA needs additional time to consider the railroad's proposal, FRA/FTA will provide a written communication to the railroad setting forth the reasons for the delay and an estimate of the additional time (not to exceed an additional 60 days) that FRA/FTA expect to take to finalize a substantive response to the proposal.

(iv) In reviewing the plan, FRA and FTA will consider factors including, but not limited to, how the proposal maximizes accessibility to individuals with disabilities, any obstacles to the use of a method that could provide better service to individuals with disabilities, the safety and reliability of the approach and related technology proposed to be used, the suitability of the means proposed to the station and line and/or system on which it would be used, and the adequacy of equipment and maintenance and staff training and deployment.

(e) In any situation using a combination of high and low platforms, a commuter or intercity rail operator shall not employ a solution that has the effect of channeling passengers into a narrow space between the face of the higher-level platform and the edge of the lower platform.

(1) Except as provided in paragraph (e)(2) of this paragraph, any obstructions on a platform (mini-high platforms, stairwells, elevator shafts, seats

etc.) shall be set at least six feet back from the edge of a platform.

(2) If the six-foot clearance is not feasible (*e.g.*, where such a clearance would create an insurmountable gap on a mini-high platform or where the physical structure of an existing station does not allow such clearance), barriers must be used to prevent the flow of pedestrian traffic through these narrower areas.

(f) For purposes of this part, level-entry boarding means a boarding platform design in which the horizontal gap between a car at rest and the platform is no more than 10 inches on tangent track and 13 inches on curves and the vertical height of the car floor is no more than 5.5 inches above the boarding platform. Where the horizontal gap is more than 3 inches and/or the vertical gap is more than $\frac{5}{8}$ inch, measured when the vehicle is at rest, the horizontal and vertical gaps between the car floor and the boarding platform must be mitigated by a bridge plate, ramp, or other appropriate device consistent with 49 CFR 38.95(c) and 38.125(c).

[76 FR 57935, Sept. 19, 2011]

§ 37.43 Alteration of transportation facilities by public entities.

(a)(1) When a public entity alters an existing facility or a part of an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations (or ensure that the alterations are made) in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.

(2) When a public entity undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of

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travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alterations. *Provided*, that alterations to the path of travel, drinking fountains, telephones and bathrooms are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.

(3) The requirements of this paragraph also apply to the alteration of existing intercity or commuter rail stations by the responsible person for, owner of, or person in control of the station.

(4) The requirements of this section apply to any alteration which begins (*i.e.*, issuance of notice to proceed or work order, as applicable) after January 25, 1992, or, in the case of intercity and commuter rail stations, after October 7, 1991.

(b) As used in this section, the phrase *to the maximum extent feasible* applies to the occasional case where the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the entity shall provide the maximum physical accessibility feasible. Any altered features of the facility or portion of the facility that can be made accessible shall be made accessible. If providing accessibility to certain individuals with disabilities (*e.g.*, those who use wheelchairs) would not be feasible, the facility shall be made accessible to individuals with other types of disabilities (*e.g.*, those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

(c) As used in this section, a *primary function* is a major activity for which the facility is intended. Areas of transportation facilities that involve primary functions include, but are not necessarily limited to, ticket purchase and collection areas, passenger waiting areas, train or bus platforms, baggage checking and return areas and employment areas (except those involving

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non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators which are frequented only by repair personnel).

(d) As used in this section, a “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas, and streets), an entrance to the facility, and other parts of the facility. The term also includes the restrooms, telephones, and drinking fountains serving the altered area. An accessible path of travel may include walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps, clear floor paths through corridors, waiting areas, concourses, and other improved areas, parking access aisles, elevators and lifts, bridges, tunnels, or other passageways between platforms, or a combination of these and other elements.

(e)(1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area (without regard to the costs of accessibility modifications).

(2) Costs that may be counted as expenditures required to provide an accessible path of travel include:

(i) Costs associated with providing an accessible entrance and an accessible route to the altered area (*e.g.*, widening doorways and installing ramps);

(ii) Costs associated with making restrooms accessible (*e.g.*, grab bars, enlarged toilet stalls, accessible faucet controls);

(iii) Costs associated with providing accessible telephones (*e.g.*, relocation of phones to an accessible height, installation of amplification devices or TDDs);

(iv) Costs associated with relocating an inaccessible drinking fountain.

(f)(1) When the cost of alterations necessary to make a path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, then such areas shall be

made accessible to the maximum extent without resulting in disproportionate costs;

(2) In this situation, the public entity should give priority to accessible elements that will provide the greatest access, in the following order:

- (i) An accessible entrance;
- (ii) An accessible route to the altered area;
- (iii) At least one accessible restroom for each sex or a single unisex restroom (where there are one or more restrooms);
- (iv) Accessible telephones;
- (v) Accessible drinking fountains;
- (vi) When possible, other accessible elements (e.g., parking, storage, alarms).
- (g) If a public entity performs a series of small alterations to the area served by a single path of travel rather than making the alterations as part of a single undertaking, it shall nonetheless be responsible for providing an accessible path of travel.

(h)(1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alteration to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel is disproportionate;

(2) For the first three years after January 26, 1992, only alterations undertaken between that date and the date of the alteration at issue shall be considered in determining if the cost of providing accessible features is disproportionate to the overall cost of the alteration.

(3) Only alterations undertaken after January 26, 1992, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alteration.

§ 37.45 Construction and alteration of transportation facilities by private entities.

In constructing and altering transit facilities, private entities shall comply with the regulations of the Department of Justice implementing Title III of the ADA (28 CFR part 36).

§ 37.47 Key stations in light and rapid rail systems.

(a) Each public entity that provides designated public transportation by means of a light or rapid rail system shall make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement is separate from and in addition to requirements set forth in § 37.43 of this part.

(b) Each public entity shall determine which stations on its system are key stations. The entity shall identify key stations, using the planning and public participation process set forth in paragraph (d) of this section, and taking into consideration the following criteria:

(1) Stations where passenger boardings exceed average station passenger boardings on the rail system by at least fifteen percent, unless such a station is close to another accessible station;

(2) Transfer stations on a rail line or between rail lines;

(3) Major interchange points with other transportation modes, including stations connecting with major parking facilities, bus terminals, intercity or commuter rail stations, passenger vessel terminals, or airports;

(4) End stations, unless an end station is close to another accessible station; and

(5) Stations serving major activity centers, such as employment or government centers, institutions of higher education, hospitals or other major health care facilities, or other facilities that are major trip generators for individuals with disabilities.)

(c)(1) Unless an entity receives an extension under paragraph (c)(2) of this section, the public entity shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1994.